

2004-01-01 10:00:00

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Petition of Autotel Pursuant)
pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Public Utilities Commission)
of Nevada Regarding Arbitration of an)
Interconnection Agreement with)
SBC Nevada)

WC Docket No. 04-311

PETITION FOR PREEMPTION

Autotel hereby petitions for preemption of the jurisdiction of the Public Utilities Commission of Nevada under Section 252(e)(5) of the Communications Act in the matter of the arbitration of an interconnection agreement between Autotel and SBC Nevada. This Petition is supported by the affidavit of Richard L. Oberdorfer, President of Autotel, and the Nevada Commission order granting SBC Nevada's Motion to Dismiss.

POINTS AND AUTHORITIES

Section 252(b) provides:

(4) Action by State commission

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

Section 252(b)(4)(C) gives State commissions 9 months after the date the LEC receives the request to resolve each issue set forth in the petition and the response. Seven months and 22 days elapsed between the date that SBC Nevada received Autotel's request and the date the parties requested the Nevada Commission to hold the arbitration proceeding in abeyance. The Nevada Commission decided to reactivate the arbitration proceeding on April 20, 2004. The statutory 9 month limit to conclude the resolution of the open issues fell on May 28, 2004. No open issues have been resolved by the Nevada Commission. The Nevada Commission has failed to complete the arbitration within the time limit in section 252(b)(4)(C).

Furthermore, the Nevada Commission has dismissed the arbitration proceeding altogether in response to SBC Nevada's Motion to Dismiss. SBC Nevada alleged that Autotel has withheld information that is not privileged and that is relevant to the matter in violation of NAC 703.680. Autotel contends that SBC Nevada already had the relevant information and that SBC Nevada's Motion was made to coerce Autotel into accepting SBC Nevada's generic 13 state interconnection agreement. The Nevada Commission based its action on the recommendation the Nevada Staff which "supports SBC Nevada's Motion to Dismiss under NAC 703.680."

Not only has the Nevada Commission failed to act to carry out its responsibility in the arbitration proceeding, it has terminated the proceeding altogether. Autotel requests the Commission issue an order preempting the State commission's jurisdiction in this matter.

Respectfully Submitted this 28th day of July, 2004



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In the Matter of Petition of Autotel Pursuant)
pursuant to Section 252(e)(5) of the)
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Jurisdiction of the Public Utilities)
Commission of Nevada Regarding Arbitration)
of an Interconnection Agreement with)
SBC Nevada)

AFFIDAVIT OF RICHARD L OBERDORFER

Richard L. Oberdorfer, being duly sworn, deposes and says:

1. I own two small CMRS companies, Western Radio Services Co. which provides wireless service in Oregon and Autotel which provides wireless service in Nevada. In Nevada, Autotel has interconnected with SBC Nevada since May 1994.
2. I am the person which represents both companies in interconnection negotiations with ILECs and sometimes I represent those companies in Arbitration proceedings before State Commissions.
3. August 19, 1996 is the date that SBC Nevada received Autotel's initial request for interconnection , services, and network elements under TCA 96.
4. March 11, 2002 is the date that SBC Nevada and Autotel agreed was the most recent request for interconnection , services, and network elements was received by SBC Nevada.
5. On August 14, 2002, Autotel filed with the Nevada Commission a Petition for Arbitration under Section 252(b). In the Petition, Autotel submitted all of the 33 open issues that SBC Nevada's negotiator raised after reviewing Autotel's proposed agreement. Some of the open issues were more in the form of questions or just observations. I attempted to narrow the open issues prior to submitting the Petition but the SBC Nevada negotiator refused to negotiate further. The negotiator insisted that SBC Nevada would only negotiate its generic 13 state CMRS interconnection agreement which it offered on an all or nothing basis. He explained that if Autotel wished to change one term or condition in the generic 13 state CMRS agreement, all other offers made in the SBC Nevada proposal would be withdrawn and subject to negotiation.

6. On October 30, 2002, SBC Nevada and Autotel requested the Nevada Commission to hold the Petition in abeyance to facilitate further negotiations. SBC Nevada assigned new negotiators and the parties were able to resolve all but one of the open issues. On February 6, 2004 Autotel filed with the Nevada Commission a letter requesting assistance in resolving the remaining open issue.

7. On April 13, 2004 SBC Nevada's attorneys informed the Nevada Commission; that it considered all the issues it identified in its response to still be open, it would renewed its discovery war for the purpose of raising additional open issues, and it requested the Commission to impose SBC Nevada's generic 13 state CMRS interconnection agreement on Autotel.

8. On April 20, 2004, the Nevada Commission held a prehearing conference and scheduled testimony, a hearing and the submission of post hearing briefs.

9. On June 7, 2004, SBC Nevada filed its Motion to Dismiss the Petition for Arbitration. SBC Nevada alleged the Autotel had not complied with NAC 703.680 and that the proper action under NAC 703.680 was " the dismissal of Autotel's application". A copy of SBC Nevada's Motion to Dismiss is attached as Exhibit A.

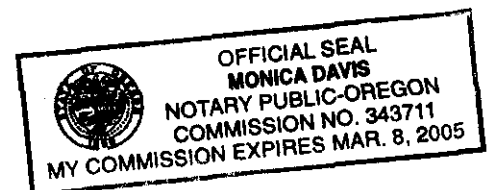
10. On June 15, 2004. Autotel filed its reply to SBC Nevada's Motion to Dismiss. A copy of Autotel's Reply is attached as Exhibit B.

11. On July 19, 2004, the Nevada Commission granted SBC Nevada's request. A copy of the Nevada Commission's decision is attached as Exhibit C.

I declare under the penalty of perjury that the above is true and correct and this Affidavit was executed on the 28th day of July, 2004 in Bend, Oregon.



Richard L. Oberdorfer



Subscribed and sworn to before me this 28 day of July, 2004



Notary Public for Oregon

My Commission Expires 3-8-05

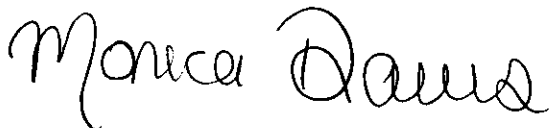
I hereby certify that a true and complete copy of the AUTOTEL'S PETITION FOR
PREEMPTION UNDER SECTION 252 (e) (5) was sent via federal express (next day
delivery) on July 28, 2004 to:

Crystal Jackson
PUCN
1150 E William Street
Carson City, Nevada 89701

Dan Foley
General Attorney
Nevada Bell Telephone Company
645 E Plumb lane
Reno, Nevada 89520

Best Copy and Printing, INC
Portals II
445 12th Street SW
Room CY-B402
Washington, DC 20554

Janice Myles (two copies)
Wire line Competition Bureau
Competition Policy Division
9300 East Hampton Drive
Capitol Heights, MD 20743

A handwritten signature in cursive script that reads "Monica Davis". The signature is written in black ink and is positioned above the printed name and title.

Monica Davis
Office Assistant

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re Petition of AUTOTEL for arbitration of)	
an Interconnection Agreement with NEVADA)	
BELL TELEPHONE COMPANY pursuant to)	Docket No. 02-8016
Section 252 of the Telecommunications Act of)	
1996.)	

SBC NEVADA'S MOTION TO DISMISS

**SBC NEVADA'S MOTION TO COMPEL AUTOTEL'S
ANSWERS TO SBC NEVADA SECOND DATA REQUESTS**

Nevada Bell Telephone Company d/b/a SBC Nevada ("SBC Nevada") moves to dismiss Autotel's Petition for Arbitration because Autotel has failed to comply with the Commission's order of June 1 regarding discovery. Further, if the Motion to Dismiss is denied, SBC Nevada seeks an order compelling Autotel to answer and produce the documents requested in SBC Nevada's Second Data Request.

Motion to Dismiss

SBC Nevada has attempted unsuccessfully to engage in meaningful discovery in this proceeding since Autotel first filed this proceeding in August 2002. Such discovery is expressly permitted by the Commission's regulations for this type of proceeding.¹ Despite repeated attempts, SBC Nevada's efforts to conduct discovery have been thwarted by Autotel's refusals to respond to data requests, refusals to answer deposition questions, refusals to negotiate and enter a protective agreement, and failures to comply

¹ "[T]he parties to any matter that has assigned a docket number may conduct discovery with regard to any information that is not privileged through written data requests and oral depositions that are reasonably calculated to obtain information that is relevant to the matter." NAC 703.680 subsection 1. Further, NAC 703.284 at subsection 1 (b) specifically provides that a party to an interconnection agreement arbitration may conduct discovery.

with the Commission's discovery regulation. Now, Autotel is not complying with the Commission's order.

On June 1, 2004, this Commission ordered Autotel to answer data requests contained in SBC Nevada's First Data Requests and to answer questions asked during the deposition of Richard Oberderfer that he had refused to answer based on claims of confidential business information. The answers and documents were to be provided to SBC Nevada on Friday, June 4. Further, Autotel was directed a second time to enter a protective agreement to address its concerns about the confidential nature of the information being requested.² In contravention to the Commission's order, Autotel did nothing. No answers were provided, no documents were produced, and despite SBC Nevada's renewed efforts, Autotel still has not entered a protective agreement.

The Commission issued its order on Tuesday, June 1. Based on the fax cover sheet, the order was apparently faxed to both Autotel and SBC Nevada.

Wednesday morning, June 2, SBC Nevada sent the attached email to Autotel (Attachment A). In the email, SBC Nevada referenced the order, identified the pages on the deposition transcript with unanswered questions, and offered two alternative protective agreements for Autotel's consideration. SBC Nevada requested that Autotel fax its responses to SBC Nevada. SBC Nevada also reminded Autotel that it had not answered SBC Nevada's Second Data Request.

² At the prehearing in this matter held on April 20, the Commission directed Autotel to enter a protective agreement with SBC Nevada if Autotel perceived confidential information would be revealed if it responded data requests and deposition questions. Specifically, the Commissioner directed Mr. Oberderfer: "What I would like to do is I would like to ask you and require to go to that brief and to consult with that brief and to make an attempt to provide simple, direct answers to the data requests. To the extent that you feel the information is sensitive or proprietary, to file it as such, and enter into such an agreement." Tr. at 26.

Thursday afternoon, June 3, Autotel sent an email in response to SBC Nevada and PUCN Staff Counsel claiming not to be aware of the Commission's order.³ Almost immediately, Staff Counsel offered to fax another copy of the order to Autotel. Subsequently, SBC Nevada counsel emailed a copy of the order to Autotel. Apparently, Autotel did not respond to either email.

On Friday, June 4, Autotel failed to provide the answers and documents that it was ordered to produce.

SBC Nevada is asking that this Commission dismiss Autotel's application for arbitration. The Commission's regulations permit the Commission to impose sanctions on a party if it "fails to respond adequately after an order from the presiding officer or the Commission concerning discovery..." NAC 703.680 subsection 13. The sanctions available to the Commission include, without limitation: (1) the dismissal of Autotel's application and (2) the imposition of civil penalties.

Dismissal, without prejudice, appears to be the appropriate remedy in this situation. Autotel's actions have demonstrated a complete disregard of the Commission's procedural regulations and its orders. SBC Nevada is expected to file responsive testimony this Friday. At this point, SBC Nevada still does not know what type of service or services that Autotel even provides. It still does not know what specific issues Autotel has with the SBC Nevada's proposed interconnection agreement proposal attached to its answer filed in this proceeding. And, SBC Nevada has been completely thwarted in its efforts to try to discover meaningful data regarding Autotel's claim that it

³ In his email, Mr. Oberdorfer indicates that Autotel's offices are closed on Friday and that he planned to travel to Boulder, Nevada, on Friday. As far as Autotel's office being closed, he testified at his deposition that he was the only officer and employee for Autotel. Also, if he needed more time to respond and produce the documents, the proper recourse would have been to seek leave from the Commission's order – not just to ignore it.

is somehow entitled to reciprocal compensation retroactively back to 1996 – the sole issue that Autotel claimed was still in dispute at the prehearing.

By granting the motion, the Commission will send a clear message to Autotel that the Commission expects Autotel to follow its regulations and orders. Further, if the Commission does so, consistent with federal and state regulations, Autotel should be directed to negotiate in good faith with SBC Nevada before resubmitting a new petition for arbitration. And, in order for the issues to be manageable and the negotiation process to be productive, the Commission may want to consider directing Autotel to start the negotiation process using the SBC Nevada generic interconnection agreement or another SBC Nevada agreement previously approved by this Commission as the template. The Arizona Corporation Commission gave a similar directive to Autotel in another interconnection agreement dispute between Autotel and an incumbent local exchange carrier. See Attachment B.

Motion To Compel Autotel To Answer SBC Nevada's Second Data Requests

Based on information obtained during the Mr. Oberdorfer's deposition conducted on May 12 in Portland and because of his refusals to respond to a variety of questions, a second data request was served on Autotel on May 13. The request consists of nine questions. The information sought pertains to the issues in dispute in this arbitration proceeding. No objections were served on SBC Nevada by the due date of May 20. Autotel's answers were due on May 27. Autotel provided no answers. Subsequently, SBC Nevada contacted Autotel to advise that Autotel answers were past due -- still no

answers. Autotel should be compelled to answer SBC Nevada's Second Data request. A copy of the data request is attached as Attachment C.

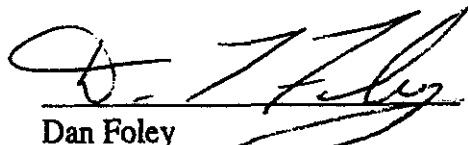
Conclusion

If Autotel wants to continue ignore data requests, the Commission's discovery procedures, and the directives and orders of the assigned Commissioner, it should not be allowed to avail itself of the Nevada administrative process. The appropriate remedy is for the Commission to simply dismiss Autotel's application and close this proceeding. In doing so, the Commission should give a strong admonition to Autotel that it elects to refile the application after attempting to negotiate an interconnection agreement with SBC Nevada, it is expected to fully cooperate in the discovery process and comply with Commission regulations.

If the Commission denies this motion to dismiss, the Commission should order Autotel to answer the questions and produce the documents requested in SBC Nevada's Second Data Request and should impose other appropriate sanctions on Autotel because of its failure to comply with the June 1st order.

Respectfully submitted this 7th day of June, 2004.

NEVADA BELL TELEPHONE COMPANY
D/B/A SBC NEVADA



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General Attorney
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-- and --

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1100 Bank of America Plaza
50 West Liberty Street
Reno, Nevada 89501
Telephone: (775) 788-8666
Facsimile: (775) 788-8682

CERTIFICATE OF SERVICE

Docket No. 02-8016


I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy thereof either in person, by United States mail, by overnight delivery service, facsimile and/or electronic mailing addressed, to:

Crystal Jackson
PUCN
1150 E. William Street
Carson City, NV 89701

Tammy Cordova
Staff Counsel
PUCN
1150 E. William Street
Carson City, NV 89701
E-mail: tcordova@puc.state.nv.us

Richard L. Oberdorfer
President
Autotel
114 North East Penn Avenue
Bend, OR 97701
E-mail: oberdorfer@earthlink.net

Dated In Reno, Nevada, this 7th Day of June 2004.



Laura P. Swenson, SBC Nevada

Attachment A

FOLEY, DANIEL (Legal)

From: FOLEY, DANIEL (Legal)
Sent: Wednesday, June 02, 2004 11:17 AM
To: 'Richard Oberdorfer'
Cc: 'Tammy Cordova'; 'Bill McKean (Lionel & Sawyer)'
Subject: Autotel - SBC Nevada Proceeding

Richard:

- 1) Pursuant to the Commissioner's order regarding your submission of written responses to the unanswered deposition questions, I have identified the following pages on the transcript with unanswered questions: 17, 18, 19, 25, 26, 34, 35, 39, 41, 44, 45, 47, 48, 49, 50, 51, 52, 53, 65, 66, 69, 80, 81, 103, and 111.
- 2) Attached are two versions of a protective agreement that SBC Nevada is willing to sign. The first version is the draft that I originally sent to you. The second version is the document prepared by your son with SBC Nevada's suggested changes to make the agreement apply to arbitration proceedings and to address other concerns that we had with the document. If you have suggestions or concerns with either version, SBC Nevada is willing to negotiate the language so that we can quickly resolve the issue. I am in a hearing all day on Friday, so if we need to discuss the protective agreement, we need to do so either today or tomorrow. If you are not available to discuss until Friday, please contact Bill McKean at (755) 788-8604.
- 3) With regards to the documents that you will be producing on Friday, please FAX the documents to me at (775) 333-2175 with a follow-up copy in the regular mail. If any "customer information related to specific customers" or "retail price information" is redacted from the documents, please indicate where on the documents the information was redacted.
- 4) On May 13, we sent you our second data requests. Attached is a copy. Under the Commission's discovery regulation, the time for objections expired on May 20. Your responses were due on May 27. I have not received any responses. Please provide the requested responses and documents to me as soon as possible. Because they are past due, please overnight the responses to me along with the requested documents or fax them to me at the FAX number noted above with a follow-up copy in the regular mail.

Thank you for your cooperation.

Dan Foley
General Attorney
Nevada Bell Telephone Company
775-333-4321
FAX: 775-333-2175



Autotel - SBC
Protective Agre...



Autotel - SBC
Protective Agre...



Data Requests to
Autotel2.doc ...

Attachment B

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission.

DOCKETED

OCT 24 2003

DOCKETED BY

pd

DOCKET NO. T-03234A-03-0188

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE PETITION OF AUTO
TEL FOR ARBITRATION OF AN
INTERCONNECTION AGREEMENT WITH
CITIZENS COMMUNICATIONS OPERATING
COMPANIES OF ARIZONA PURSUANT TO
SECTION 252(b) OF THE
TELECOMMUNICATIONS ACT OF 1996.

ORDER

66457

Open Meeting
October 21 and 22, 2003
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 27, 2003, Autotel ("Autotel") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration of Interconnection Rates, Terms, and Conditions ("Petition") pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("Act"). Autotel is a wireless carrier, or Commercial Mobile Radio Services ("CMRS") provider, and does not appear to be seeking interconnection as a CLEC. The Petition listed four issues, the primary one being whether rates for interconnection should be based on TELRIC pricing. Instead of agreeing to use a standard wireless interconnection agreement as a template, Autotel is insisting that it be given access to unbundled network elements to affect interconnection.

2. On April 21, 2003, Citizens Utilities Rural Company, Inc. ("Citizens") filed a Response and Motion to Dismiss and Motion and Request for Protective Order. Citizens alleged several deficiencies in the Petition under Commission rules, including failing to list all "open issues"; failing to accurately describe the issues raised; failing to attach relevant documentation; failing to

1 adequately state the parties' positions or explain how those positions meet or fail to meet the legal
2 and regulatory standards; failing to provide alternative rates; and failing to identify documents
3 proposed to be presented at arbitration.

4 3. A pre-arbitration conference was held on May 15, 2003. In addition to the issues
5 raised in its Motion to Dismiss, Citizens claimed that it was unable to determine what services or
6 UNEs Autotel was interested in obtaining. Citizens stated it needed to know how Autotel would
7 interconnect with its system in order to provide the cost studies that Autotel was demanding. The
8 arbitrator ordered Autotel to provide Citizens with a list of UNEs and services as soon as possible and
9 set another status conference in approximately eight weeks. The parties agreed to extend the
10 deadlines for arbitration.

11 4. On June 27, 2003, Citizens filed a Motion to Compel Disclosure and Impose
12 Sanctions based on Autotel's failure to provide Citizens with detailed information describing its
13 proposed network configuration for interconnection and how Autotel plans to interconnect its
14 wireless network with Citizens' unbundled network elements. Specifically, Citizens requests the
15 following information from Autotel:

16 (a) A description of its proposed network configuration for interconnection with
17 Citizens in sufficient detail so that Citizens can determine its technical feasibility;
18 and

19 (b) A specific and detailed technical explanation and/or illustration regarding how
20 Autotel, as a wireless provider-carrier, intends to directly interconnect its wireless
21 network with Citizens' wireless unbundled network elements.

22 5. Autotel did not file a Response to Citizen's June 27, 2003 Motion. Autotel provided
23 Citizens with a list of UNEs on May 15, 2003, but its list was a copy of all UNEs found in the FCC
24 regulations, and it did not provide an explanation of how it intended to use the wireline network
25 elements in conjunction with its wireless network. Autotel complained Citizens was not providing
26 cost studies for the UNEs. During the July 10, 2003 status conference, the major point of discussion
27 was whether the Act requires a local exchange carrier to provide access to UNEs to wireless carriers.
28 The answer to this question is instrumental in resolving the main sticking point between the parties

1 which is whether Autotel can access Citizens' network via UNEs at TELRIC pricing or whether it
2 must use Citizen's special access tariffs.

3 6. Pursuant to our July 18, 2003 Procedural Order, the parties briefed the issue of
4 whether the Act requires a local exchange carrier such as Citizens to provide access to UNEs to
5 wireless carriers such as Autotel. Because the legal issue raised is one of first impression and affects
6 Commission jurisdiction, Commission Staff was asked to review the parties' briefs and file
7 comments containing Staff's legal analysis of the issue. Citizens and Autotel filed initial and closing
8 briefs on August 1, 2003 and August 13, 2003, respectively. Staff filed its comments and legal
9 analysis on August 29, 2003.

10 7. Autotel asserts that it seeks a provision in the interconnection agreement with Citizens
11 that would allow it to purchase facilities such as dedicated transport from its switch to its base station
12 or from one base station to another base station at rates, terms and conditions established under
13 Section 251 of the Act. Autotel claims that without access to unbundled elements such as Dedicated
14 Transport, Autotel will be impaired in its ability to provide service. Autotel argues that Citizens'
15 special access service is not an alternative to unbundled elements. Autotel argues that Sections 251
16 and 252 of the Act apply equally to requesting wireline or wireless carriers.

17 8. Citizens argues that for purposes of the pending arbitration proceeding and arbitrated
18 interconnection agreement, Citizens has no obligation to provide access to unbundled Dedicated
19 Transport or any other UNEs to connect Autotel's Mobile Switching Center ("MSC Switch") or Cell
20 Sites, and no duty to provide access to other UNEs unless and until (i) Autotel Provides Citizens
21 with a bona fide request including specific details regarding the proposed interconnection and use of
22 UNEs in conjunction with its wireless network and (ii) the parties negotiate an amendment to the
23 wireless interconnection agreement or a new CLEC interconnection agreement to address the
24 ordering, provisioning, billing (including the rates) and repair of UNEs.

25 9. Although Autotel submitted a list that appears to request access to all FCC-defined
26 UNEs¹, Citizens believes, based on its knowledge of wireless carriers and statements made by

27 ¹ Including local loop and subloops, the network interface device, switching capacity, interoffice transmission facilities,
28 signaling networks and call-related databases, operator services and directory assistance, operations support systems and
the high frequency portion of the loop.

1 Autotel, that Autotel is really interested in "interoffice transmission facilities" also known as
2 Dedicated Transport and/or Loops. Citizens argues it has no obligation to provide unbundled
3 Dedicated Transport to Autotel to connect its MSC switch and Cell Sites. Citizens asserts the FCC's
4 rules define "dedicated transport" as transmission facilities dedicated to a particular customer or
5 carrier between wire centers owned by the ILEC or the requesting carrier or between switches owned
6 by the ILEC or requesting carrier. Citizens claims this definition limits the availability of Dedicated
7 Transport as a UNE to facilities between "wire centers" or "central offices." A Cell Site is not a wire
8 center or central office and thus, Citizens argues, the FCC's definition of unbundled transport does
9 not apply to facilities running to a CMRS Cell Site. Citizens states that consequently, ILECS across
10 the country have generally refused to provide unbundled Dedicated Transport to CMRS carriers
11 between their MSC Switches and Cell Sites, but have required wireless carriers to obtain the facilities
12 under the ILECs' special access tariffs. Citizens states the FCC is aware of this situation and Citizens
13 is not aware of a single ruling by the FCC that finds ILECs are required to provide unbundled
14 Dedicated Transport between CMRS MSC Switches and Cell Sites.

15 10. To the extent Autotel is seeking unbundled access to Loops, Citizens states that the
16 Loop is defined by the FCC rules as a network element used to connect the requesting carrier's end
17 user customer to the carrier's equipment. Citizens asserts that a Cell Site is not an end-user customer
18 premises. Because the connection between the end-user subscriber and the wireless network is
19 established through a wireless radio interface there is no wireline loop to be used to serve the end
20 user, thus, there is no conceivable means for Autotel to use an unbundled loop to connect its MSC
21 Switches and Cell Sites. Citizens further argues that even if the Commission considered the Cell Site
22 to be an end-user premises within the scope of an unbundled loop, Autotel would still need to connect
23 the Cell Site to the ILEC central office and to the CMRS MSC Switch via a combination of the Loop
24 and Dedicated Transport, known as an Enhanced Extended Link or EEL. Citizens asserts that the
25 FCC has determined that carriers can not convert special access lines to EELS unless the requesting
26 carrier provides a "significant amount of local exchange service" to a particular customer under one
27 of three circumstances. Citizens Brief at 14. Citizens argues that Autotel meets none of the criteria
28 for being eligible to convert special access lines to EELs.

1 11. Autotel claims that it would be the end user of the Loop facility and there is no
2 distinction between the loop demarcation point being located in an office building or an electronic
3 shelter. Autotel states that it has no special access circuits to convert, and the FCC rules concerning
4 the conversion of special access lines to EELs are inapplicable. Autotel Reply Brief.

5 12. Citizens notes that Autotel has no currently existing wireless facilities in Arizona and
6 has not constructed an MSC Switch or Cells Sites in the state. Citizens argues that it has no
7 obligation to construct new facilities for Autotel to use as UNEs, as the FCC has stated in its
8 *Triennial Review Order*² that it does not require ILECS to trench new cable or otherwise construct
9 transmission facilities. Autotel responds that Citizens cannot determine if new construction is
10 required until a UNE order is placed by Autotel.

11 13. Finally, Citizens argues that it does not have a duty to provide UNEs to any carrier
12 unless the carrier's request for interconnection is determined to be technically feasible. Citizens
13 states that to its knowledge there is no existing or previously successful interconnection configuration
14 providing a direct interconnection between wireline unbundled network elements and a wireless
15 network, and thus, no presumption of technical feasibility for the type of interconnection that Autotel
16 seeks. Citizens acknowledges that it has the responsibility to demonstrate that a request for a UNE is
17 not technically feasible, but in the instant case, Citizens asserts that Autotel's continued refusal to
18 disclose pertinent information makes it impossible to reach any conclusion other than it would be too
19 risky to provide untried access to UNEs with a wireless carrier.

20 14. Staff notes that in its *Triennial Review Order*, the FCC states that the definition of
21 unbundled transport in the *UNE Remand Order* was overly broad. Thus, in the *Triennial Review*
22 *Order*, it clarified that "the Act does not require incumbent LECs to unbundled transmission facilities
23 connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling
24 traffic. *Triennial Review Order* para. 365. The FCC found that "a more reasonable and narrowly-
25 tailored definition of the dedicated transport network element includes only those transmission
26

27 ² In the Matter of Review of the §251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of
28 the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireless Services Offering
Advanced Telecommunications Capability, Report and Order on Remand and Further Notice of Proposed Rulemaking,
CC Docket Nos. 01-338, 96-98, 98-147 (*Triennial Review*), Adopted February 20, 2003. Released August 21, 2003.

1 facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between
2 incumbent LEC switches" (emphasis original). *Id.* at para. 366. Transmission facilities that "simply
3 connect a competing carrier's network to the incumbent LEC's network are not inherently a part of
4 the incumbent LEC's local network" and thus not subject to unbundling. *Id.*

5 15. Staff states that the determination of whether Citizens must provide access to UNEs to
6 wireless carriers such as Autotel is not dependent on the carrier's status as a wireless carrier, but is
7 instead dependent on whether the transport requested by the wireless carrier is to carry voice or data
8 within the incumbent LEC's network, or outside the network. Transport from a wireless carrier's
9 switch to its base station, or from base station to base station are not within the incumbent's network
10 and so the wireless carrier is not entitled to unbundling.

11 16. We find that Citizens does not have a duty to provide access to unbundled Dedicated
12 Transport or Loops to connect Autotel's MSC Switch and Cell Sites. Autotel's inability to access
13 unbundled network elements is not dependent on its status as a wireless carrier, but rather on the fact
14 that the requested transport is being used to interconnect its system with Citizens network and would
15 not be a part of Citizens' network. Specifically related to CMRS carriers request for access to
16 transport, the FCC found in its *Triennial Review Order* that:

17
18 No requesting carrier shall have access to unbundled inter-network
19 transmission facilities under section 251(c)(3). Thus, assuming *arguendo*,
20 that a CMRS carrier's base station is a type of requesting carrier switch,
21 CMRS carriers are ineligible for dedicated transport from their base
22 station to the incumbent LEC network. However, all telecommunications
23 carriers, including CMRS carriers, will have the ability to access transport
24 facilities *within* the incumbent LEC's network, pursuant to section
25 251(c)(3), and to interconnect for the transmission and routing of
26 telephone exchange service and exchange access, pursuant to section
27 251(e)(2). *Triennial Review Order* at para. 368.

28 17. To date Autotel has not demonstrated that the access it seeks to dedicated transport
would fall under the unbundling obligation as articulated by the FCC. Absent such showing, Citizens
has no obligation to provide unbundled access. Neither has Autotel demonstrated how it would be
able to use UNEs other than Transport and Loops to effect interconnection. Given the novelty of
Autotel's request, Citizens' request that Autotel provide detailed information on how it would use
these UNEs to interconnect is reasonable.

CONCLUSIONS OF LAW

1
2 1. Citizens is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution.

4 2. Citizens is an incumbent local exchange carrier within the meaning of 47 U.S.C. §252.

5 3. The Commission has jurisdiction over the parties and of the subject matter in this
6 docket.

7 4. The Commission's resolution of the issues pending herein is just and reasonable,
8 consistent with the 1996 Telecommunications Act, FCC Orders and Rules, the Commission's Rules,
9 and all applicable law, and is in the public interest.

10 5. Autotel has not demonstrated that the access it seeks to dedicated transport would fall
11 under the unbundling obligations described by the FCC.

ORDER

12
13 IT IS THEREFORE ORDERED that to the extent Autotel remains interested in negotiating
14 an interconnection agreement with Citizens, the parties shall resume negotiations employing
15 Citizens' basic CMRS interconnection agreement or other Commission-approved wireless
16 interconnection agreement as a template for negotiations.

17 IT IS FURTHER ORDERED that the parties shall negotiate for a period of at least thirty days
18 from the date of this order before filing a joint statement of outstanding issues to be arbitrated.

19 IT IS FURTHER ORDERED that Citizens does not have a duty to provide access to
20 unbundled Dedicated Transport or Loops to connect Autotel's MSC Switch and/or Cell Sites to
21 interconnect with Citizens' network.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that Citizens does not have a duty to provide access to other
2 UNEs to Autotel unless and until (i) Autotel provides Citizens with a bona fide request including
3 details regarding the proposed interconnection and its use of UNEs in conjunction with its wireless
4 network and (ii) the parties negotiate an amendment to the wireless interconnection agreement or a
5 new CLEC interconnection agreement to address the ordering, provisioning, billing (including rates)
6 and repair of UNEs.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
9

10
11 
CHAIRMAN

11 
COMMISSIONER

11 
COMMISSIONER

12
13 
COMMISSIONER

13 
COMMISSIONER
14

15
16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this 24th day of October, 2003.

20 
21 BRIAN C. McNEIL
EXECUTIVE SECRETARY

22 DISSENT _____

23 DISSENT _____

24 JR:
25
26
27
28

1 SERVICE LIST FOR:

AUTO TEL

2 DOCKET NO.:

T-03234A-03-0188

3 Richard L. Oberdorfer
4 AutoTel
5 114 N.E. Penn Avenue
6 Bend, Oregon 97701

7 Kevin Saville
8 Associate General Counsel, Western Region
9 Citizens Communications Company
10 2901 N. Central Avenue, Suite 1660
11 Phoenix, Arizona 85012

12 Robert Metli
13 Cheifetz Iannitelli Marcolini, P.C.
14 1850 North Central Avenue,
15 19th Floor
16 Phoenix, Arizona 85004

17 Curt Huttzell
18 Director, State government Affairs
19 Citizens Communications Company
20 9672 South 700 East, Suite 101
21 Sandy, Utah 84070-3555

22 Christopher Kempley, Chief Counsel
23 Legal Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
26 Phoenix, Arizona 85007

27 Ernest Johnson, Director
28 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Attachment C

**SBC NEVADA'S
DATA REQUEST 2
PROPOUNDED TO AUTOTEL
PUCN DOCKET NO. 02-8016
May 13, 2004**

A. INSTRUCTIONS

Please respond to each data request in writing. In responding to these data requests, please: (i) label each response to correspond to the data request; (ii) begin each response on a separate page; (iii) with respect to attachments, please identify, in the response, the attachment by title and number of pages and identify with specificity the section or sections of the attachment that respond to the data request; (iv) identify the author of each response; (v) forward responsive attachments and material as soon as they become available; and, (vi) specify reasons for not providing a complete response if a complete response cannot be furnished.

In accordance with Sections 703.105 and 703.680(1) of the Nevada Administrative Code ("NAC") and Nevada Rule of Civil Procedure 26(e), data requests impose a continuing obligation on the respondent to supplement an initial response with additional responsive information if such information becomes available. In this regard, should additional responsive information become available, please: (i) advise Nevada Bell in writing; and, (ii) provide a supplemental response as soon as the material becomes available.

Questions or concerns regarding data requests should be directed to William J. McKean, Esq. (775-788-8604) or Dan Foley (775-333-4321).

B. DEFINITIONS

As used herein, the following terms shall have the meaning and shall be interpreted as set forth below.

The term "affiliate" shall mean any person that, either directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with any person.

The term "associated person" shall mean the present or former officers, directors, agents, employees, representatives, legal counsel or other persons acting or purporting to act for or on behalf of another person.

"Commission" or "PUCN" means the Public Utilities Commission of Nevada.

The term "concerning" shall mean reflecting, referring to, relating to, mentioning, describing, evidencing, constituting, tending to prove or tending to refute.

The term "document" or "documents" is used in the broadest sense and shall include the definition contained in Rule 34(a)(1) of the Federal Rules of Civil Procedure (including the reference to "tangible things") and the definition of "writings and recordings" contained in Rule

1001(1) of the Federal Rules of Evidence, and shall include all original documents, as defined in Rule 1001(3) of the Federal Rules of Evidence, and all drafts and copies, including copies bearing notations or marks not found on the original, of any writing or printed, graphic or electronic materials of any nature whatsoever and in whatever language, including but not limited to, the following items, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: correspondence, memoranda, messages, notes, calendar or diary entries, statistics, letters, envelopes, telegrams, telexes, telephone bills or messages, including, but not limited to, reports, summaries or memoranda of telephone conversations and conferences, telephone logs, electronic mail, studies, summaries, tabulations, analyses, printed matter, records, reports, minutes, photographs, tapes, financial statements, work sheets, contracts, agreements, other official documents and legal instruments, journals, manuals, technical releases, orders, invoices, checks, statements, receipts, vouchers, notebooks, data sheets, returns, and graphic or oral records or representations of any kind; and all information kept by electronic, electromagnetic, photographic or mechanical means, including, without limitation, information stored on or readable by computers and audio/video recordings of any type.

The term "identify," with respect to a natural person, means to provide the individual's: (i) residential address and telephone number; (ii) business address and telephone number; (iii) employer; and, (iv) immediate supervisor. The term "identify," with respect to a corporation, partnership, limited partnership, professional corporation, limited liability company or other type of juridical entity or business organization, and governmental entity, means to provide the entity's: (i) address; and (ii) name, residential address, and telephone number of all natural persons employed or otherwise related to the entity with knowledge of the relevant subject matter. The term "identify," with respect to a document or a study, means to: (i) provide the title of the document or study; (ii) state the date on which the document or study was prepared; (iii) identify the author of the document or study; and, (iv) identify any persons who provided information to, consulted with, or otherwise assisted the person identified as the author in developing or preparing the document or study.

The terms "include" and "including" shall be interpreted in every instance as being illustrative of the information requested, shall be read as meaning "including but not limited to," and shall not be interpreted to exclude any information otherwise within the scope of any data request.

The terms "person" and "persons" shall encompass natural persons, business enterprises or legal entities, as the case may be, and their respective predecessors or successors in interest. Any reference herein to a person shall be deemed to include all "associated persons," all "affiliates" and all associated persons of the affiliates.

The term "SBC NEVADA" means Nevada Bell Telephone Company.

SBC NEVADA 2-1 through SBC NEVADA 2-9

May 13, 2004

Page 3 of 4

The term "work paper" includes any document which was utilized in the collection, evaluation, analysis, summarization, or characterization of information concerning the referenced subject matter.

C. RULES OF CONSTRUCTION

All references to the singular contained herein shall be deemed to include the plural, and all references to the plural shall be deemed to include the singular.

The terms "all" and "any" shall be construed as all and any and shall not be interpreted to exclude any information otherwise within the scope of any data request.

The terms "and" and "or" shall each be interpreted as meaning "and/or" and shall not be interpreted to exclude any information otherwise with in the scope of any data request.

D. DATA REQUESTS

SBC NEVADA 2-1: Identify the number of Autotel customers served by the Autotel's switch located in Pahrump, Nevada.

SBC NEVADA 2-2: Identify the number of paging customers served by Autotel's switch located in Pahrump, Nevada. Please identify the number of non-paging customers served by Autotel's switch.

SBC NEVADA 2-3: Provide the Autotel bills for the last two months for all Autotel's customers served by Autotel's switch in Pahrump, Nevada.

SBC NEVADA 2-4: Provide the form Autotel service agreement signed by its customers disclosed during the deposition of Mr. Oberdorfer. Please provide ten examples of the completed form of actual Autotel customers who are served by the Pahrump switch.

SBC NEVADA 2-5: Provide copies of any network usage records that reflects calls the that are completed, transited, terminated and/or originated on Autotel's network at the Pahrump location (including, but not limited to, aggregate billing records, call summaries, traffic studies, call detail records, etc.)

SBC NEVADA 2-6: Provide copies of all interexchange carrier bills sent to Autotel for the customers served by Autotel's Pahrump switch for the last two months.

SBC NEVADA 2-7: Provide copies of any yellow page advertising of Autotel for any service area in Nevada.

SBC NEVADA 2-1 through SBC NEVADA 2-9

May 13, 2004

Page 4 of 4

SBC NEVADA 2-8: Identify all sections of SBC's proposed interconnection agreement attached to SBC Nevada's Answer that Autotel does not object to including in an interconnection agreement.

SBC NEVADA 2-9: Identify all sections of SBC's proposed interconnection agreement attached to SBC Nevada's Answer that Autotel objects to including. Please explain the rationale and any authority that Autotel's objection. Please provide alternative language that addresses the subject matter of the section that is acceptable to Autotel. In doing so, please identify each and every issue that you have with SBC Nevada's proposed interconnection agreement.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF NEVADA**

In the matter of the petition)
by Autotel for arbitration of)
an interconnection agreement)
with Nevada Bell pursuant)
to Section 252(b) of the)
Telecommunications Act)

Docket No. 02-8016

**AUTOTEL'S REPLY TO SBC NEVADA'S MOTION TO DISMISS AND
MOTION TO COMPEL ANSWERS TO SBC NEVADA'S SECOND DATA
REQUESTS**

Motion To Dismiss

SBC Nevada's request is for the Nevada Commission to deny Autotel an interconnection agreement until Autotel accepts SBC Nevada's standard terms and conditions. The remedy for a State Commission's failure to act is preemption of the matter by the FCC. The Nevada Commission can not grant the relief requested by SBC Nevada. However if the Nevada Commission elects not to participate in the arbitration process under Section 252, it should advise the parties so they may pursue their remedies without further delay.


Motion To Compel

First, SBC claims it does not know what service or services Autotel even provides. SBC in response to Staff Data Request 14 was able to produce the "Nevada Bell Cellular Interconnection Agreement" that SBC proposed to Autotel in early 1997. That interconnection agreement as well as the draft interconnection agreement presently before the Commission both limit the use of the interconnection facilities to CMRS service. SBC's claim that it has not been informed of what service Autotel provides is simply false.

Second, SBC claims it does not know what specific issues Autotel has with SBC's proposed interconnection agreement that was attached to its Response. SBC did not file a Petition for Arbitration with the Nevada Commission. The Commission can only consider those issues raised in the Petition filed by Autotel and the Response filed by SBC Nevada. SBC's request for this data is irrelevant to the resolution of the remaining open issue.

Finally, SBC claims it has been completely thwarted in its efforts to obtain data regarding the remaining open issue. SBC has never requested any data relevant to the open issue from Autotel. In reviewing SBC Nevada's response to Staff data request 12, it is obvious that SBC Nevada has been in possession of this data all along. The data furnished by SBC Nevada clearly shows that Autotel had a non-reciprocal interconnection arrangement with SBC Nevada prior to August 1996. SBC Nevada has not demonstrated a need for any further data requests.

Respectfully submitted this 15th day of June 2004

By: 
Autotel

I hereby certify that a true and complete copy of the AUTOTEL'S REPLY TO SBC NEVADA'S MOTION TO DISMISS AND MOTION TO COMPEL ANSWERS TO SBC NEVADA'S SECOND DATA REQUESTS was sent via first class mail on June 14, 2004.

Tim Hay
Bureau of Consumer Protection
1000 East William Street, Suite 200
Carson City, Nevada 89701

Tammy Cordova
Staff Counsel
PUCN
1150 East William Street
Carson City, Nevada 89701

Dan Foley
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Dan R. Reaser, Esq.
William J. McKean, Esq.
Lionel Sawyer and Collins
1100 Bank of America Plaza
50 West Liberty Street
Reno, Nevada 89501

Sent Via Overnight Federal Express:

Crystal Jackson
Commission Secretary
Nevada Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701



Toni Oberdorfer
Office Assistant

Exhibit C

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re Petition of AUTOTEL for arbitration of an)
Interconnection Agreement with NEVADA BELL)
TELEPHONE COMPANY pursuant to Section 252 of) Docket No. 02-8016
the Telecommunications Act of 1996.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on July 7, 2004.

PRESENT: Chairman Donald L. Soderberg
Commissioner Adriana Escobar Chanos
Commissioner Carl B. Linvill
Commission Secretary Crystal Jackson

ORDER GRANTING MOTION TO DISMISS

The Public Utilities Commission of Nevada (the "Commission") makes the following
findings of fact and conclusions of law:

I. Procedural History

1. On August 14, 2002, Autotel filed with the Commission a Petition seeking
arbitration of an Interconnection Agreement with Nevada Bell Telephone Company, d/b/a SBC
Nevada ("SBC Nevada") (collectively, the "Parties"), pursuant to Section 252 of the
Telecommunications Act of 1996. The Commission designated this matter as Docket No. 02-
8016.

2. This matter was filed pursuant to the Nevada Revised Statutes ("NRS") and
Nevada Administrative Code ("NAC") Chapters 703 and 704, including, but not limited to,
NAC 703.286 and 47 United States Code ("U.S.C.") § 252.

3. The Commission issued public notice of this Petition and notice of a prehearing
conference, in accordance with State law and the Commission's Rules of Practice and Procedure.

4. The Regulatory Operations Staff of the Commission ("Staff") participates in this docket as a matter of right.

5. On September 13, 2002, SBC Nevada filed a Motion to Compel Autotel's Responses to Data Requests ("Motion to Compel") with the Commission, contending that Autotel refused to provide responses to some of SBC Nevada's Data Requests and that other responses were incomplete or unresponsive.

6. On September 19, 2002, Staff responded in support of the Motion to Compel arguing, *inter alia*, that Autotel failed to support its objections to the Data Requests.

7. On September 20, 2002, Autotel filed its Response to SBC Nevada's Motion to Compel ("Autotel September 20, 2002 Response"), maintaining that the Telecommunications Act of 1996 limited discovery to only that information necessary to resolve the issues in the arbitration. Autotel represented that the information sought by SBC Nevada was not necessary to resolve the issues in this arbitration.

8. On September 23, 2002, SBC Nevada filed a Reply in Support of its Motion to Compel, asserting that Autotel's objections to providing responses to its Data Requests were without merit.

9. On September 24, 2002, the Commission commenced a duly noticed prehearing conference in this docket. The Presiding Officer continued the prehearing conference until November 4, 2002. The Parties agreed to postpone seeking a decision on the Motion to Compel by the Presiding Officer until after the continued prehearing conference.

10. On October 30, 2002, SBC Nevada and Autotel filed a letter requesting that the Commission hold the Petition in abeyance pending Autotel's review of the new AT&T Wireless/SBC Nevada interconnection agreement, which SBC Nevada and Autotel intended to

use as a starting point for negotiating their interconnection agreement. The Parties also agreed to waive the 240-day deadline set forth in NAC 703.288.

11. The Commission construed SBC Nevada and Autotel's October 30, 2002 Letter as a Stipulation entered into by Autotel and SBC Nevada, as the parties to the arbitration.

12. On December 3, 2002, the Commission issued an Order approving the October 30, 2002 Stipulation and waiving the deadline set forth in NAC 703.288.

13. On September 18, 2003, the Parties filed a letter stating that negotiations were ongoing.

14. On February 6, 2004, Autotel filled a letter requesting the Commission's assistance to resolve its negotiations with SBC Nevada.

15. On February 10, 2004, SBC Nevada filed a request for a prehearing conference to establish a schedule for: the completion of discovery; the filing of testimony; the hearing date; and the filing deadlines for the submission of any post and/or pre-hearing briefs. SBC Nevada also requested consideration at the prehearing conference of its pending Motion to Compel.

16. On March 2, 2004, the Presiding Officer issued a Procedural Order setting the date for the prehearing conference and requiring the Parties to file a Statement of Issues and Positions.

17. On April 13, 2004, the Parties filed their Statements of Issues and Positions. SBC Nevada's Statement indicated that additional issues, besides the one issue presented to the Commission by Autotel, had yet to be resolved by the Parties.

18. A prehearing conference was held on April 20, 2004. At the prehearing conference, the Parties presented their positions on SBC Nevada's Motion to Compel. The

Presiding Officer granted SBC Nevada's Motion to Compel and ordered Autotel to respond to SBC Nevada's Data Requests.

19. On April 30, 2004, SBC Nevada filed a Notice of Taking of Deposition of Richard L. Oberdorfer on May 12, 2004 in Portland, Oregon.

20. On May 10, 2004, SBC Nevada filed its Renewed Motion to Compel Autotel to Produce Requested Documents requesting the Presiding Officer to compel Autotel to produce documents requested in SBC Nevada's Data Requests.

21. On May 17, 2004, SBC Nevada filed a Motion to Compel Autotel to Answer Deposition Questions and Data Requests, Motion to Compel Autotel to Resume the Deposition of Richard L. Oberdorfer in Reno, Nevada, and Supplement Information in Support of SBC Nevada's Renewed Motion to Compel Autotel to Produce Requested Documents ("Second Motion to Compel").

22. On May 17, 2004, Staff filed its Response in support of SBC Nevada's Second Motion to Compel. In its Response, Staff stated that in the two years that this case has been pending, Staff still lacked fundamental facts underlying the very issues on which Autotel has requested arbitration. Staff also requested leave to provide further comment to the Commission once Staff has had an opportunity to review Autotel's responses to the Data Requests.

23. On May 25, 2004, Autotel filed its Response to SBC Nevada's Motion to Compel ("Autotel May 25, 2004 Response"). Autotel argued that 47 U.S.C. § 252(b)(4)(B) only allows the Commission to request the information related to the open issues.

24. On June 1, 2004, the Presiding Officer issued an Order Granting SBC Nevada's Second Motion to Compel.

25. On June 7, 2004, SBC Nevada filed a Motion to Dismiss and Motion to Compel Autotel's Answer to SBC Nevada's Second Data Request (the "Motion to Dismiss").

26. On June 14, 2004, Staff filed its Response in support of SBC Nevada's Motion to Dismiss (Staff "Response").

27. On June 15, 2004, Autotel filed its Response to SBC Nevada's Motion to Dismiss (Autotel's "Response"). Autotel's Response was filed out of time.

28. On June 17, 2004, the Presiding Officer issued Procedural Order 2, suspending the procedural schedule in this Docket.

II. Positions of the Parties

A. SBC Nevada

29. SBC Nevada claims that Autotel's actions demonstrate a complete disregard of the Commission's procedural regulations and Orders. (Motion to Dismiss at 3.) SBC Nevada still does not know what type of service or services Autotel provides or Autotel's specific issues with SBC Nevada's proposed interconnection agreement. (Id.) SBC Nevada states that despite repeated attempts, its discovery efforts have been thwarted by Autotel's refusals to respond to Data Requests, answer deposition questions, negotiate a protective agreement, comply with applicable discovery regulations, and comply with the Procedural order issued by the Presiding Officer. (Id.) Therefore, SBC Nevada argues that the Commission should dismiss the Petition under NAC 703.680.

B. Staff

30. Staff supports SBC Nevada's Motion to Dismiss. Staff agrees that Autotel has demonstrated a complete disregard for the Commission's procedural regulations and orders. (Staff Response at 1.) Staff stated that it has also recently propounded discovery on Autotel, only to receive incomplete or non-responsive answers to its Data Requests. (Id.) In addition,

Staff argued that Autotel's issue for arbitration, its entitlement to reciprocal compensation under 47 C.F.R. § 51.717, is dependant on the type of services offered by Autotel and the terms of Autotel's pre-existing arrangement with SBC Nevada. (Id. at 2.) Staff claims that Autotel has failed to provide this information in response to direct discovery requests intended to illicit relevant facts. (Id.) Without this information, Staff concludes, the Commission cannot decide the only issue presented by Autotel. (Id.) Therefore, Staff supports SBC Nevada's Motion to Dismiss under NAC 703.680.

C. Autotel

31. In its Response to SBC Nevada's Motion to Dismiss, Autotel merely stated that the Commission could not grant the Motion. (Autotel Response at 1.) Autotel provided no basis for this position. Autotel also stated that the "remedy for a State Commission's failure to act is preemption of the matter by the FCC." (Id.)

III. Commission Discussion

32. The Commission may require the Parties to provide "such information as may be necessary" to reach a decision on unresolved issues. (47 U.S.C. § 252(b)(4)(B).) The Commission's regulations also give the Parties the right to engage in discovery. (NAC 703.284.) Under NAC 703.680(13), the Commission may dismiss an application or petition if a party fails to respond adequately to a discovery request after an order from the Presiding Officer.

33. The Presiding Officer ordered Autotel to respond to Data Requests from SBC Nevada on two occasions. The Presiding Officer first ordered Autotel to "provide simple, direct answers to the data requests...and enter into [a protective agreement]." (Prehearing Conference Tr. at 26.) On June 1, 2004, following a Second Motion to Compel from SBC Nevada, the Presiding Officer issued an Order finding that Autotel failed to respond to SBC Nevada's Data Requests and questions at the May 12, 2004 Deposition of Richard L. Oberdorfer. The Presiding

Officer's Order instructed Autotel to respond to the Data Requests and deposition questions by June 4, 2004.

34. Autotel has yet to comply with the Presiding Officer's Orders. Autotel has apparently taken the position that it will not, under any circumstances, release any information it considers proprietary business information. (SBC Nevada's Second Motion to Compel at Exhibit B.) Autotel, however, has not supported its claims that the information sought by SBC Nevada is indeed proprietary, nor has Autotel taken advantage of the procedures outlined in NAC 703.527 *et seq*, specifically NAC 703.5274, to address the discovery disputes.

35. Autotel has also not adequately explained why it has not complied with the Presiding Officer's Orders. Autotel has repeatedly failed to provide information directly related to the one issue it presented for Arbitration. Autotel has also not addressed the additional issues raised by SBC Nevada in this proceeding. Autotel maintains that there is only one issue in the arbitration, its claim to reciprocal compensation, and refuses to provide basic information necessary to resolve the issues raised by SBC Nevada. Autotel's position ignores the Presiding Officer's Orders, the Commission's regulations, and Autotel's requirements under 47 U.S.C. § 252.

36. Autotel has argued that it is not required to provide the requested information. Initially, Autotel argued that the information was not relevant and not necessary to resolve the issues in the arbitration. (Autotel September 20, 2003 Response at 2.) Later, Autotel argued that the proper remedy for a party refusing to provide information was to proceed on only the information previously available. (Autotel May 25, 2004 Response at 2.) Finally, Autotel claimed that the Commission could not grant SBC Nevada's Motion to Dismiss. (Autotel June

15, 2004 Response at 1.) Autotel's arguments, however, fail to demonstrate how it could ignore the Orders of the Presiding Officer and Commission Regulations.

37. Autotel is mistaken in its arguments defending its refusal to provide the requested information. The Presiding Officer determined that the information requested by SBC Nevada was relevant to issues in this proceeding. SBC Nevada raised issues regarding the services provided by Autotel in its Answer to the original Petition for Arbitration. SBC Nevada continued to raise those issues in its Statement of Issues and Positions and at the April 20, 2004 prehearing conference. The Commission must "limit its consideration of any [Petition for Arbitration] to the issues set forth in the petition and *in the response....*" (47 U.S.C. § 252(b)(4), *emphasis added*.) Therefore, the issues SBC Nevada raised in its Answer are open to discovery.

38. The Commission also disagrees with Autotel's position that if a Party refuses to comply with discovery requirements, the Commission must base its decision on the information presented. This position is untenable in the current instance. 47 U.S.C. §252(b)(4)(B) states that "[i]f any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the [Commission], then the [Commission] may proceed on the basis of the best information available to it from whatever source derived." This provision is a valuable tool, but not a requirement, for normal arbitrations under normal deadlines. The Telecommunications Act of 1996 was designed to foster rapid development of competition in local telephone service. (GTE North, Inc. v. McCarty, 978 F. Supp. 827, 831 (N.D. Ind. 1997).) Autotel and SBC Nevada, however, have already waived the applicability of the resolution deadline and have continued with this proceeding for nearly two years. It is true that the Commission may proceed without the information it ordered Autotel to provide, but the Commission is under no obligation to do so. Therefore, Autotel cannot knowingly withhold relevant information and then ask the

Commission to base its decision on the information Autotel chose to release, unless the Commission agrees it is necessary to produce a timely decision. That is not the case in this proceeding.

39. Finally, Autotel is incorrect that the Commission cannot dismiss the proceeding. The Federal Communications Commission has determined that a state commission has carried out its responsibility when it responds to a petition for arbitration but subsequently dismisses or denies the arbitration. (In re Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission, CC Docket No. 99-198, Memorandum Opinion and Order, 15 FCC Rcd 23318, ¶ 16 (1999); *see also* In re Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration, CC Docket Nos. 97-163, 97-164, 97-165, Memorandum Opinion and Order, 13 FCC Rcd 1755, ¶ 33 (1997), recons. denied, 14 FCC Rcd 7024 (1999).) Autotel's blatant failure to comply with the Commission's procedures requires dismissal.

40. Furthermore, Autotel's refusal to comply with the Presiding Officer's Orders violates Autotel's duty to negotiate in good faith. 47 U.S.C. § 252(b)(5) states that:

The refusal of any other party to the negotiation...to cooperate with the State commission in carrying out its function as an arbitrator...shall be considered a failure to negotiate in good faith.

Autotel's failure to comply with the Presiding Officer's Orders shows bad faith in the arbitration process and provides additional justification for dismissal of its Petition.

41. The Commission finds that it is in the public interest to dismiss Autotel's Petition for Arbitration without prejudice.

THEREFORE, it is ORDERED that:

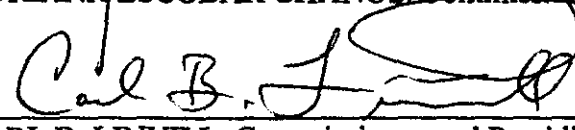
1. Nevada Bell Telephone Company's, d/b/a SBC Nevada, Motion to Dismiss is GRANTED.

2. Autotel's Petition for Arbitration is DISMISSED without prejudice.
3. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of this Order.

By the Commission,


DONALD L. SODERBERG, Chairman


ADRIANA ESCOBAR CHANOS, Commissioner


CARL B. LINVILL, Commissioner and Presiding Officer

Attest: 
CRYSTAL JACKSON, Commission Secretary

Date: Carson City, Nevada

(SEAL) 7-19-04

